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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/004,420	01/08/1998	JACOB RICHTER	260048601	1198

26646 7590 12/13/2002

KENYON & KENYON
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NEW YORK, NY 10004

EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/004,420

Applicant(s)
Richter et al

Examiner
Robert Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 20, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-84 is/are pending in the application.
- 4a) Of the above, claim(s) 20-23 and 41-69 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 15-19, 33, and 34 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 12, 14, 24-32, 35-38, 70, 74, and 76-84 is/are rejected.
- 7) ☒ Claim(s) 3, 6-9, 11, 13, 39, 40, 71-73, and 75 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 21-23 6) ☐ Other:

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Claims 20-23 and 41-69 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 8.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 84 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites a positive relationship to the human body. The human body is non-statutory and cannot be positively recited, Applicant should recite that the device is adapted not to contact the vessel, or use similar language.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 71, and 81-84 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anderson et al. Anderson et al shows a device including a sensor 72, a sensor support, e.g. the element between glass 80 and the sensor 72, where the support is coupled to tines 50, indirectly. Anderson shows the remaining features.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 12, 14, 24-32, 35-38, 70, 74, and 76-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winston et al in view of Lazarus. Winston shows a sensor located on the interior wall of a stent, where it is not soldered to the stent. Lazarus teaches that it is desirable to include anchoring means 16 on stents to hold the stent in place during use. Hence, it would have been obvious to modify Winston et al to use the anchoring means, so as to prevent movement during use. As such, the anchoring means is the fixation device and the stent is the sensor support. It also teaches the recited method of fixing the sensor in place with a stent, noting that a stent is an anchoring ring. With respect to claims 30 and 31, the manner of attachment of the sensor to the support would have been obvious to one skilled in the art. The combination shows the remaining features.

Claims 3, 6-9, 11, 13, 39, 40, 71-73, and 75 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10, 15-19, 33, and 34 are allowable.

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Applicant's arguments filed 9/20/2002 have been fully considered but they are not persuasive.

Applicant's comments concerning the rejection based Winston et al are deemed moot in view of the new grounds of rejection.

Applicant has argued that the sensor support of Anderson is not coupled to the tines. The examiner disagrees, noting the coupled means connected to. Element 72 is coupled to element 82, and 80, which are coupled to the catheter which is coupled to the tines.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Van Bockel shows a similar device to applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg, can be reached on (703) 308-3130. The fax phone number for this Group is (703) 308-0758.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [max.hindenburg@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

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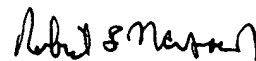
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN

December 10, 2002



ROBERT L. NASSER
PRIMARY EXAMINER